

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

EUNICE VIOLA et al.,

Plaintiffs and Appellants,

v.

STATE OF CALIFORNIA  
DEPARTMENT OF MANAGED  
HEALTH CARE et al.,

Defendants and Respondents.

B174455

(Los Angeles County  
Super. Ct. No. BC306599)

ORDER MODIFYING OPINION  
[NO CHANGE IN JUDGMENT]

**THE COURT\***

It is ordered that the modification filed on November 4, 2005, be modified in the following particulars:

1. The second item of the modification filed November 4, 2005 is vacated.
2. The first full sentence on page 8 of the opinion filed October 11, 2005 is modified to read:

Their reasoning runs: (1) sections 1341.9 and 1352.1 of the Knox-Keene Act<sup>1</sup> grant the defendants all powers and duties relating to health care service plans, including the power to approve plan contracts; (2) under section 1352.1, plans with “untrue, misleading, deceptive” language or other language that does not comply with the Act may not be approved; (3) the Department therefore may not approve a plan that contains an unconstitutional provision; (4) plaintiffs have a constitutional right to jury trial; (5) health care service plans between an employer and an insurer containing a mandatory binding arbitration clause effect an unconstitutional waiver of the employees’ right to jury trial; (6) therefore, the Department should require that plans offer a choice of jury trial or mandatory binding arbitration; and (7) the Department’s approval of the plans the plaintiffs were offered was improper and subject to challenge by the plaintiffs.

There is no change in the judgment.

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\*EPSTEIN, P.J., CURRY, J., GRIMES, J.\*\*

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\*\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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<sup>1</sup> Plaintiffs also invoke Insurance Code section 10291. But, “[h]ealth care service plans under the Knox-Keene Act are generally subject to the jurisdiction of the Commissioner of Corporations (§ 1341) [now Director of the Department of Managed Health Care], *not* the Insurance Commissioner. Thus, Insurance Code section 740, subdivision (g), exempts health care service plans from Department of Insurance jurisdiction (though the Commissioner of Corporations is to consult with the Insurance Commissioner to ensure consistency of regulations to the extent practicable under section 1342.5). Regulations concerning health care service plans are found in title 10 of the California Code of Regulations, section 1300.43 et seq.’ (*Williams v. California Physicians’ Service* (1999) 72 Cal.App.4th 722, 729 [85 Cal.Rptr.2d 497], fn. omitted.)” (*Smith v. PacifiCare Behavioral Health of Cal., Inc.*, *supra*, 93 Cal.App.4th at p. 150, fn. 13.)